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Past Government Shutdowns: Key Resources

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Past Government Shutdowns: Key Resources

Abstract

[Excerpt] When federal government agencies and programs lack budget authority, they experience a “funding gap.” Under the Antideficiency Act (31 U.S.C. § 1341 et seq.), they must cease operations, except in certain circumstances. When there is a funding gap that affects many federal entities, the situation is often referred to as a government shutdown. In the past, there have occasionally been government shutdowns, the longest of which lasted 21 days, from December 16, 1995, to January 6, 1996.

This report provides an annotated list of historical documents and other resources related to several past government shutdowns. The report also includes links to full-text documents when available. There is limited information and guidance related to shutdowns, and it is difficult to predict what might happen in the event of one, but information about past events may help inform future deliberations.

This report will be updated as additional resources are identified.

Keywords

government shutdowns, federal budget, funding gap

Comments

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Past Government Shutdowns: Key Resources

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Summary

When federal government agencies and programs lack budget authority, they experience a “funding gap.” Under the Antideficiency Act (31 U.S.C. § 1341 et seq.), they must cease operations, except in certain circumstances. When there is a funding gap that affects many federal entities, the situation is often referred to as a government shutdown. In the past, there have occasionally been government shutdowns, the longest of which lasted 21 days, from December 16, 1995, to January 6, 1996.

This report provides an annotated list of historical documents and other resources related to several past government shutdowns. The report also includes links to full-text documents when available. There is limited information and guidance related to shutdowns, and it is difficult to predict what might happen in the event of one, but information about past events may help inform future deliberations.

For more information about federal government shutdowns and funding gaps, see

- CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*, by Clinton T. Brass;
- CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass;
- CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup; and
- CRS Report R41745, *Government Shutdown: Operations of the Department of Defense During a Lapse in Appropriations*, by Stephen Daggett.

This report will be updated as additional resources are identified.

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Introduction

This report provides historical documents and other resources related to past government shutdowns, along with brief annotations that describe the contents of the documents. The report includes links to full-text documents when available. There is limited information and guidance related to shutdowns, and it is difficult to predict what might happen in the event of one, but information about past events may help inform future deliberations.

The following annotated resources are meant to guide readers to relevant materials from governmental and selected nongovernmental sources.

Congressional Research Service Reports

The following CRS reports include information related to past government shutdowns.

- CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*, by Clinton T. Brass.

Brief Description: This report provides contact information for CRS subject matter experts who may be able to help answer questions about what happened to specific agencies or programs during past government shutdowns.

- CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

Brief Description: This report discusses the causes, processes, and effects of federal government shutdowns, including potential issues for Congress.

- CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

Brief Description: This report briefly covers funding gaps since FY1977, including those related to the 1995 and 1996 government shutdowns.

- CRS Report R41745, *Government Shutdown: Operations of the Department of Defense During a Lapse in Appropriations*, by Stephen Daggett.

Brief Description: This report reviews the effects of a lapse in appropriations on the Department of Defense. Activities that provide for national defense have been permitted to continue during past government shutdowns.

Government Accountability Office

The U.S. Government Accountability Office (GAO)¹ has published reports related to past and potential shutdowns. The following documents investigate possible issues and provide historical context surrounding government shutdowns.

- U.S. General Accounting Office, *Cost of the Recent Partial Shutdown of Government Offices*, PAD-82-24, December 10, 1981, available at <http://www.gao.gov/products/PAD-82-24>.

Brief Description: According to GAO, this report was completed “in response to congressional requests,” for which “GAO contacted 13 cabinet departments and 12 selected agencies and offices to obtain information about the costs of a 1981 partial shutdown of government offices.” It includes costs estimates, background information about the costs, and GAO recommendations to Congress concerning agency operations in the event of a government shutdown.

- U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, available at <http://www.gao.gov/products/PAD-81-31>.

Brief Description:² According to GAO, as of March 1981, “interruptions in federal agency funding at the beginning of the fiscal year (FY) and operations on continuing resolutions have become the norm rather than the exception.” For years, many federal agencies continued to operate during a funding gap, while “minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down” while waiting for the enactment of annual appropriations acts or continuing resolutions. During the FY1981 appropriations process, the President requested opinions on the Antideficiency Act from the then-U.S. Attorney General, Benjamin Civiletti.³ In two memoranda issued in 1980 and 1981, the Attorney General stated that the act required agencies to terminate all operations when their current appropriations expired. According to GAO, agencies were uncertain how to respond to the Attorney General’s opinion and what activities they would be able to continue if appropriations expired. This GAO report outlines some of the problems surrounding late appropriations and funding gaps. It also includes Attorney General Civiletti’s opinions within Appendices IV and VIII.⁴

¹ Until 2004, GAO was called the General Accounting Office. For further information on the agency name change, see CRS Report RL30349, *GAO: Government Accountability Office and General Accounting Office*, by Frederick M. Kaiser.

² Information about historical context in this section was provided by Clinton Brass. For more information on government shutdowns see, CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

³ Benjamin Civiletti was U.S. Attorney General from 1979 to 1981.

⁴ Some pages within the PDF are out of order; for example, p. 77 appears before p. 76. The opinions stated that, with some exceptions, the head of an agency could avoid violating the Antideficiency Act only by suspending the agency’s operations until the enactment of an appropriation. In the absence of appropriations, exceptions would be allowed only when there is “some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property.” For discussion of exemptions, see U.S. GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol., GAO-06-382SP, February 2006, ch. 6, pp. 6-146 - 6 -159.

- U.S. General Accounting Office, *Government Shutdown: Funding Lapse Furlough Information*, GGD-96-52R, December 1, 1995, available at <http://www.gao.gov/products/GGD-96-52R>.

Brief Description: GAO was asked to provide available information on the numbers of federal employees who might have been subject to furlough in the event of a second shutdown in 1995. GAO provided numbers that were based on plans provided by the Office of Management and Budget (OMB) to GAO in October 1995. The numbers included within this document do not represent actual furloughs. The numbers represent planned furloughs in advance of the two shutdowns, which occurred later in November and December–January.

- U.S. General Accounting Office, *Government Shutdown: Permanent Funding Lapse Legislation Needed*, GGD-91-76, June 6, 1991, available at <http://www.gao.gov/products/GGD-91-76>.

Brief Description: In 1990, GAO issued a questionnaire to government agencies in an attempt to measure the effects of a partial shutdown which occurred on Columbus Day Weekend. This report also includes estimates on the effects of a hypothetical three-day shutdown during a nonholiday workweek.

House and Senate Committee Prints and Hearings

Committee Prints

The following committee print includes historical information on a past government shutdown.

- U.S. Congress, House Committee on Post Office and Civil Service, *Cost of Shutting Down Federal Government on November, 23, 1981*, committee print, 97th Congress, 2nd session, March 25, 1982 (Washington: GPO, 1982).

Brief Description: This committee print assessed the cost of the November 23, 1981, shutdown of federal offices resulting from a presidential veto of a continuing resolution for FY1982. The committee print includes individual federal departments' and agencies' shutdown impact assessments in a study conducted by GAO (pp. 73-212).⁵ It also includes costs estimates, an OMB memorandum, and the presidential veto statement.

Hearings

The following are congressional hearings which include historical information on past shutdowns. Some of these hearings include items for the record such as OMB memoranda.

- U.S. Congress, House and Senate Committees on the Budget, *Effects of Potential Government Shutdown*, hearing, 104th Congress, 1st session, September 19, 1995

⁵ U.S. General Accounting Office, *Cost of the Recent Partial Shutdown of Government Offices*, PAD-82-24, December 10, 1981, available at <http://www.gao.gov/products/PAD-82-24>.

(Washington: GPO, 1995), available at <http://www.archive.org/stream/effectsofpotenti00unit>.

Brief Description: This hearing took place before the November 1995 shutdown, and it examined potential scenarios if a shutdown were to occur. The hearing includes testimony from Walter Dellinger, Assistant Attorney General, U.S. Department of Justice, and Alice M. Rivlin, Director, OMB. The hearing includes additional materials such as articles, letters from the Federal Reserve System, and a memo⁶ from Walter Dellinger to Alice Rivlin.

- U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on Civil Service, *Government Shutdown I: What's Essential?*, hearings, 104th Congress, 1st session, December 6, and 14, 1995 (Washington: GPO 1997), available at <http://www.gpo.gov/fdsys/pkg/CHRG-104hhr23275/pdf/CHRG-104hhr23275.pdf>.

Brief Description: These hearings were held in December 1995 and generally covered the November 1995 shutdown.⁷ Because the hearings were not published until 1997, some additional information related to the December 1995-January 1996 government shutdown is included.⁸

- U.S. Congress, House Committee on Resources, *State Service Donations in Budgetary Shutdowns*, hearing, 104th Congress, 1st session, December 5, 1995 (Washington: GPO 1996), available at <http://www.archive.org/stream/stateservicedona00unit>.

Brief Description: The hearing was held to consider legislation⁹ that would have directed the Department of Interior to accept donations from state governments' employee services for assistance in operating national parks and wildlife refuges during federal government shutdowns.

Office of Management and Budget

OMB documents and guidance from previous funding gaps and shutdowns may provide insights into current and future practices. The Office of Personnel Management (OPM) has stated on its website that agencies may use OMB guidelines to determine "excepted" positions (i.e., those not subject to furlough) and provided retyped copies of previous OMB bulletins and memoranda for

⁶ U.S. Department of Justice, Office of Legal Counsel, *Government Operation in the Event of a Lapse in Appropriations*, memorandum from Walter Dellinger, Assistant Attorney General, for Alice Rivlin, Director, Office of Management and Budget, August 16, 1995. Reprinted in the hearing print at pp. 77-85.

⁷ This hearing print includes inserted material from the Department of Veterans Affairs (VA) *Shutdown Plan, September 1995*, pp. 80-90; VA, *Agency Shutdown Guidance*, August 14, 1995, pp. 119-131; VA, *Lapse of Appropriation Furlough Guidance*, September 19, 1995, pp. 132-151; and VA, *Updated Plans for Implementing a Government Shutdown*, December 14, 1995, pp. 354-374.

⁸ This hearing includes an OMB letter with information about the effects of the shutdowns and counts of employees who were excepted and not excepted from furlough, pp. 266-270 and 272-274. (Pages 273 and 274 are out of order within the hearing print.)

⁹ Includes the text of H.R. 2677 and H.R. 2706, 104th Congress.

reference.¹⁰ This website, entitled *Guidance and Information on Furloughs*, is available at <http://www.opm.gov/furlough/OMBGuidance/index.asp>.

The OMB documents include

- OMB Bulletin No. 80-14, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*, August 28, 1980 (citing the 1980 Civiletti opinion¹¹ and requiring agencies to develop shutdown plans);
- OMB Memorandum, *Agency Operations in the Absence of Appropriations*, November 17, 1981 (referencing OMB Bulletin No. 80-14; stating the 1981 Civiletti opinion¹² remains in effect; and providing examples of “excepted activities” that may be continued under a funding gap);
- OMB Bulletin No. 80-14, Supplement No. 1, *Agency Operations in the Absence of Appropriations*, August 20, 1982 (“updating” OMB Bulletin No. 80-14 and newly requiring agencies to submit contingency plans for review by OMB);
- OMB Memorandum M-91-02, *Agency Operations in the Absence of Appropriations*, October 5, 1990 (referencing OMB Bulletin No. 80-14; stating that OMB Bulletin No. 80-14 was “amended” by the OMB Memorandum of November 17, 1981; stating the 1981 Civiletti opinion remains in effect; and directing agencies on a Friday how to handle a funding gap that begins during the weekend); and
- OMB Memorandum M-95-18, *Agency Plans for Operations During Funding Hiatus*, August 22, 1995 (referencing OMB Bulletin No. 80-14, as amended; citing the 1981 Civiletti opinion; transmitting to agencies a 1995 Office of Legal Counsel opinion as an “update” to the 1981 Civiletti opinion;¹³ and directing agencies to send updated contingency plans to OMB).

OMB also provides agencies with annual instructions in *Circular No. A-11* on how to prepare for and operate during a funding gap.

- U.S. Executive Office of the President, Office of Management and Budget, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, July

¹⁰ Some of these documents have been reproduced within legislative branch documents mentioned within this report. See U.S. Congress, House and Senate Committees on the Budget, *Effects of Potential Government Shutdown*, hearing 104th Cong., 1st sess., September 19, 1995, pp. 77-85; U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, Appendices V, VI, and VII; and U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on Civil Service, *Government Shutdown I: What’s Essential?*, hearings, 104th Cong., 1st sess., December 6, and 14, 1995, pp. 99-112, 121-131, and 428-430.

¹¹ For the 1980 Civiletti opinion, see U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, pp. 63-69, available at <http://www.gao.gov/products/PAD-81-31>. The pages within the PDF are out of order within Appendix IV; for example, p. 64 should appear before p. 63.

¹² For the 1981 Civiletti opinion, see U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, pp. 77-92, available at <http://www.gao.gov/products/PAD-81-31>. The pages within the PDF are out of order within Appendix VIII; for example, p. 77 appears before p. 76.

¹³ U.S. Department of Justice, Office of Legal Counsel, *Government Operation in the Event of a Lapse in Appropriations*, memorandum from Walter Dellinger, Assistant Attorney General, for Alice Rivlin, Director, Office of Management and Budget, August 16, 1995, reprinted in U.S. Congress, House and Senate Committees on the Budget, *Effects of Potential Government Shutdown*, hearing, 104th Cong., 1st sess., September 19, 1995 (Washington: GPO, 1995), pp. 77-85, available at <http://www.archive.org/details/effectsofpotenti00unit>.

2010, Section 124, available at http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc.

Brief Description: The circular establishes two “policies” regarding the absence of appropriations: (1) a prohibition on incurring obligations unless the obligations are otherwise authorized by law and (2) permission to incur obligations “as necessary for orderly termination of an agency’s functions,” but prohibition of any disbursement (i.e., payment).

The circular also directs agency heads to develop and maintain shutdown plans, which are to be submitted to OMB when initially prepared and also when revised. Agency heads are to use the Civiletti opinions, a 1995 Department of Justice, Office of Legal Counsel opinion, and the circular to “decide what activities are essential to operate their agencies during an appropriations hiatus.”¹⁴

Office of Personnel Management

OPM has some information publicly available on the Internet related to government shutdowns and furloughs.

- U.S. Office of Personnel Management, *Guidance and Information on Furloughs*, available at <http://www.opm.gov/furlough/>.

Brief Description: OPM has a website entitled, *Guidance and Information on Furloughs*. This website includes frequently asked questions (FAQs) covering many issues related to furloughs, which OPM describes as “the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.” Some of the topics included within the OPM website are: Types of Furloughs, Pay and Deductions from Pay, Retirement and Insurance, and Requests for Leave. The website also provides access to historical documents from OMB.

Presidential Materials

The following documents are from the National Archives and Records Administration (NARA) Clinton Presidential Materials Project.¹⁵ These documents cover statements made by President William Clinton leading up to and during the November 1995 and December 1995–January 1996 government shutdowns; these documents are arranged by date.

¹⁴ For the Department of Justice, Office of Legal Counsel document, see U.S. Congress, House and Senate Committees on the Budget, *Effects of Potential Government Shutdown*, hearing, 104th Cong., 1st sess., September 19, 1995 (Washington: GPO, 1995), pp. 77-85, available at <http://www.archive.org/details/effectsofpotenti00unit>. For more information on federal government shutdown causes, processes, and effects, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

¹⁵ The website notes that this has become part of the William J. Clinton Presidential Library and Museum. See http://clinton.archives.gov/project_overview/project_overview.html. In 2000-2001, NARA created snapshots of the Clinton White House website including press releases, speeches, and publications. Some further information on the project can be found at <http://www.archives.gov/press/press-releases/2001/nr01-34.html>.

Presidential Statements Related to FY1996 Shutdowns

The November 1995 Shutdown

Brief Historical Context:¹⁶ The November 1995 shutdown began on November 14, 1995, and ended on November 19, 1995. An estimated 800,000 federal employees were furloughed during the five full days of the shutdown.¹⁷ The furlough action was due to the expiration of a continuing resolution (P.L. 104-31), which funded the government through November 13, 1995. On November 13, President William Clinton vetoed a second continuing resolution (H.J.Res. 115) and a debt limit extension bill (H.R. 2586) and instructed agencies to begin shutdown operations. The following presidential statements occurred during this time period.

- U.S. President (Clinton), November 13, 1995, *President's Message to Congress on Continuing Resolution Veto*, available at <http://clinton6.nara.gov/1995/11/1995-11-13-president-message-to-congress-on-continuing-res-veto.html>.
- U.S. President (Clinton), November 14, 1995, *Statement by the President on Government Shutdown*, available at <http://clinton6.nara.gov/1995/11/1995-11-14-for-the-record-president-on-government-shutdown.html>.
- U.S. President (Clinton), November 17, 1995, *Transmittal to Congress of Presidential C.R.*, available at <http://clinton6.nara.gov/1995/11/1995-11-17-transmittal-to-congress-of-presidential-cr.html>.
- U.S. President (Clinton), November 18, 1995, *Radio Address by the President to the Nation*, available at <http://clinton6.nara.gov/1995/11/1995-11-18-radio-address-by-the-president-to-the-nation.html>.
- U.S. President (Clinton), November 19, 1995, *Statement by the President on Budget Agreement*, available at <http://clinton6.nara.gov/1995/11/1995-11-19-statement-by-the-president-on-budget-agreement.html>.

The December 1995–January 1996 Shutdown

Brief Historical Context:¹⁸ The December 1995–January 1996 shutdown began on December 16, 1995, and ended on January 6, 1996. The shutdown was triggered by the expiration of a continuing funding resolution enacted on November 20, 1995 (P.L. 104-56), which funded the government through December 15, 1995. This shutdown officially ended on January 6, with the

¹⁶ Information about the historical context in this section was provided by Jessica Tollestrup. For more information on funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

¹⁷ See U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on Civil Service, *Government Shutdown I: What's Essential?*, hearings, 104th Cong., 1st sess., December 6, and 14, 1995, p 4.

¹⁸ Information about the historical context in this section was provided by Jessica Tollestrup. For more information on funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

passage of three CRs (P.L. 104-91, P.L. 104-92, and P.L. 104-94). There were five additional short-term continuing resolutions needed to prevent further funding gaps from occurring through April 26, 1996, when the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134) was enacted to fund any agencies or programs not yet funded through FY1996. The following presidential statements occurred during the time period of December 15, 1995, through January 6, 1996.

- U.S. President (Clinton), December 15, 1995, *Statement by the President on Budget Negotiations*, available at <http://clinton6.nara.gov/1995/12/1995-12-15-president-statement-on-budget-negotiations.html>.
- U.S. President (Clinton), December 16, 1995, *Radio Address by the President to the Nation*, available at <http://clinton6.nara.gov/1995/12/1995-12-16-radio-address-by-the-president-to-the-nation.html>.
- U.S. President (Clinton), December 18, 1995, *Statement by the President on the Budget*, available at <http://clinton6.nara.gov/1995/12/1995-12-18-statement-by-the-president-on-the-budget.html>.
- U.S. President (Clinton), December 22, 1995, *Statement by the President on Signing House Joint Res. 136*, available at <http://clinton6.nara.gov/1995/12/1995-12-22-president-statement-on-signing-house-joint-res.html>.
- U.S. President (Clinton), December 23, 1995, *Radio Address by the President to the Nation*, available at <http://clinton6.nara.gov/1995/12/1995-12-23-radio-address-by-the-president-to-the-nation.html>.
- U.S. President (Clinton), January 4, 1996, *Statement by the President on House Joint Resolution 153*, available at <http://clinton6.nara.gov/1996/01/1996-01-04-president-statement-on-house-joint-resolution.html>.
- U.S. President (Clinton), January 6, 1996, *Statement by the President on Balanced Budget Proposal*, available at <http://clinton6.nara.gov/1996/01/1996-01-06-president-remarks-on-balanced-budget-proposal.html>.
- U.S. President (Clinton), January 6, 1996, *Statement by the President in Signing HR 1358*, available at <http://clinton6.nara.gov/1996/01/1996-01-06-president-statement-in-signing-hr.html>.
- U.S. President (Clinton), January 6, 1996, *Statement by the President in Signing H.R. 1643*, available at <http://clinton6.nara.gov/1996/01/1996-01-06-president-statement-in-signing-hr-a.html>.
- U.S. President (Clinton), January 6, 1996, *Radio Address by the President to the Nation*, available at

<http://clinton6.nara.gov/1996/01/1996-01-06-radio-address-by-the-president-to-the-nation.html>.

White House Documents Related to the FY1996 Shutdowns: Elena Kagan,¹⁹ Associate White House Counsel, Clinton Administration

Brief Historical Context: Elena Kagan is currently serving as U.S. Supreme Court Justice. In 1995-1996, she served as Associate White House Counsel under President Clinton. Access to records from Elena Kagan’s time in the Office of White House Counsel is provided at the Clinton Library website. A series of PDF documents labeled “shutdown” appears in Box 7 at the website. Many of these materials are working documents, handwritten notes, and emails, and so were not official statements released during 1995-1996 about the shutdowns by the Clinton Administration.

- William J. Clinton Presidential Library and Museum, *Textual Research, Elena Kagan, Office of White House Counsel*, at http://www.clintonlibrary.gov/_previous/textual-KAGANCounsel.htm.

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¹⁹ Current U.S. Supreme Court Justice Elena Kagan served as Associate Counsel to President Clinton from 1995 to 1996.